

The Organic Law

(Act of March 2, 1861, Ch. 86, 12 Statutes at Large 239.)

An act to provide a temporary government for the territory of Dakota, and to create the office of surveyor general therein.

Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That all that part of the territory of the United States included within the following limits, namely: commencing at a point in the main channel of the Red river of the North, where the forty-ninth degree of north latitude crosses the same; thence up the main channel of the same, and along the boundary of the state of Minnesota, to Big Stone lake; thence along the boundary line of the said state of Minnesota to the Iowa line; thence along the boundary line of the state of Iowa to the point of intersection between the Big Sioux and Missouri rivers; thence up the Missouri river, and along the boundary line of the territory of Nebraska, to the mouth of the Niobrara or Running Water river; thence following up the same, in the middle of the main channel thereof, to the mouth of the Kaha Paha or Turtle Hill river; thence up said river to the forty-third parallel of north latitude; thence due west to the present boundary of the territory of Washington; thence along the boundary line of Washington territory, to the forty-ninth degree of north latitude; thence east, along said forty-ninth degree of north latitude, to the place of beginning, be, and the same is hereby organized into a temporary government, by the name of the territory of Dakota: provided, that nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries and constitute no part of the territory of Dakota, until said tribe shall signify their assent to the president of the United States to be included within the said territory, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law or otherwise, which it would have been competent for the government to make if this act had never passed: provided, further, that nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion thereof to any other territory or state.

§2. And be it further enacted, that the executive power and authority in and over said territory of Dakota, shall be vested in a Governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The Governor shall reside within said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve all laws passed the legislative assembly before they shall take effect; he may grant pardons for offenses

against the laws of said territory, and reprieves for offenses against the laws of the United States until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

§3. And be it further enacted, that there shall be a secretary of said territory, who shall reside therein, and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the Governor, in his executive department; he shall transmit one copy of the laws, and one copy of the executive proceedings, on or before the first day of December in each year, to the president of the United States, and, at the same time, two copies of the laws to the speaker of the house of representatives and the president of the senate, for the use of Congress; and in case of the death, removal, or resignation, or other necessary absence of the Governor from the territory, the secretary shall have, and he is hereby authorized and required, to execute and perform all the powers and duties of the Governor during such vacancy or necessary absence, or until another Governor shall be duly appointed to fill such vacancy.

[§4. And be it further enacted, that the legislative power and authority of said territory shall be vested in the Governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of nine members, which may be increased to thirteen, having the qualifications of voters as hereinafter prescribed, whose terms of service shall continue two years. The house of representatives shall consist of thirteen members, which may be increased to twenty-six, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts for the election of the council and house of representatives, giving to each section of the territory representation in the ratio of its population, (Indians excepted) as nearly as may be; and the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district for which they may be elected, respectively. Previous to the first election, the Governor shall cause a census or enumeration of the inhabitants of the several counties and districts of the territory to be taken; and the first election shall be held at such time and places, and be conducted in such manner, as the Governor shall appoint and direct; and he shall, at the same time, declare the number of the members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The number of persons authorized to be elected, having the highest number of votes in each of said council districts, for members of the council, shall be declared by the Governor to be duly elected to the council; and the person or persons authorized to be elected having the greatest number of votes for the house of representatives, equal to the number to which each county or district shall be entitled, shall be declared by the Governor to be elected members of the house of representatives: provided, that in case of a tie between two or more persons voted for, the Governor shall order a new election, to supply the vacancy made by such tie. And the persons thus elected to the legislative assembly shall meet at such place and on such day as the Governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the

representation in the several counties or districts to the council and house of representatives, according to the population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: provided, that no one session shall exceed the term of forty days, except the first, which may be extended to sixty days, but no longer.]

§5. And be it further enacted, that every free white male inhabitant of the United States above the age of twenty-one years, who shall have been a resident of said territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters and of holding office at all subsequent elections shall be such as shall be prescribed by the legislative assembly: provided, that the right of suffrage and of holding office shall be exercised only by citizens of the United States and those who shall have declared on oath their intention to become such, and shall have taken an oath to support the Constitution of the United States.

[§6. And be it further enacted, that the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of nonresidents be taxed higher than the lands or other property of residents; nor shall any law be passed impairing the rights of private property; nor shall any discrimination be made in taxing different kinds of property; but all property subject to taxation shall be in proportion to the value of the property taxed.]

§7. And be it further enacted, that all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the Governor and legislative assembly of the territory. The Governor shall nominate and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for; and, in the first instance the Governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

§8. And be it further enacted, that no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

§9. And be it further enacted, that the judicial power of said territory shall be vested in a Supreme Court, district courts, probate courts, and in justices of the peace. The Supreme Court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years. The said terri-

tory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the Supreme Court, at such time and place as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of the justices of the peace, shall be as limited by law: provided, that justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said Supreme and district Courts, respectively, shall possess chancery as well as common-law jurisdiction, and authority for redress of all wrongs committed against the Constitution or laws of the United States, or of the territory, affecting persons or property. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the Supreme Court shall trial by jury be allowed in said court. The Supreme Court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said Supreme Court shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner, and under the same regulations as the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; and each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States as is vested in the circuit and district courts of the United States; and the said Supreme and district Courts of the said territory, and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said Constitution and laws; and writs of error and appeals in all such cases shall be made to the Supreme Court of said territory the same as in other cases. The said clerk shall receive, in all such cases, the same fees which the clerks of the district courts of Nebraska territory now receive for similar services.

[§10. And be it further enacted, that there shall be appointed an attorney for said territory, who shall continue in office for four years, unless sooner removed by the president and who shall receive the same fees and the salary as the attorney of the United States for the present territory of Nebraska. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of the district court of the United States for the present territory of Nebraska, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.]

§11. And be it further enacted, that the Governor, secretary, chief justice and associate justices, attorney, and marshal, shall be nominated and, by and with the advice and consent of the senate, appointed by the president of the United States. The Governor and secretary to be appointed as aforesaid shall, before they act as such, respectively take an oath or affirmation before the district judge, or some justice of the peace in the limits of said territory duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the Supreme Court of the United States, to support the Constitution of the United States and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said Governor or secretary, or some judge or justice of the peace of the territory who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of fifteen hundred dollars as Governor, and one thousand dollars as superintendent of Indian affairs; the chief justice and associate justices shall each receive an annual salary of eighteen hundred dollars; the secretary shall receive an annual salary of eighteen hundred dollars. The said salaries shall be paid quarter-yearly at the treasury of the United States. The members of the legislative assembly shall be entitled to receive three dollars each per day during their attendance at the session thereof, and three dollars for every twenty miles travel in going to and returning from the said sessions, estimated according to the nearest usually traveled route. There shall be appropriated annually the sum of one thousand dollars, to be expended by the Governor, to defray the contingent expenses of the territory. There shall also be appropriated annually a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the secretary of the territory shall annually account to the secretary of the treasury of the United States for the manner in which the aforesaid sum shall have been expended.

§12. And be it further enacted, that the legislative assembly of the territory of Dakota shall hold its first session at such time and place in said territory as the Governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the Governor and legislative assembly shall proceed to locate and establish the seat of government for said territory at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said Governor and legislative assembly.

[§13. And be it further enacted, that a delegate to the house of representatives of the United States, to serve during each Congress of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several

other territories of the United States to the said house of representatives. The first election shall be held at such time and places, and be conducted in such manner, as the Governor shall appoint and direct; and at all subsequent elections, the times, places, and manner of holding elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given accordingly.]

[§14. And be it further enacted, that when the land in said territory shall be surveyed, under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in the states hereafter to be erected out of the same.]

§15. And be it further enacted, that temporarily, and until otherwise proved by law, the Governor of said territory may define the judicial districts of said territory and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding court in the several counties or subdivisions in each of said judicial districts by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

[§16. And be it further enacted, that the Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within the said territory of Dakota as elsewhere within the United States.]

[§17. And be it further enacted, that the president of the United States, by and with the advice and consent of the senate, shall be, and he is hereby, authorized to appoint a surveyor-general for Dakota, who shall locate his office as such place as the secretary of the interior shall from time to time direct, and whose duties, powers, obligations, responsibilities, compensation, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of the surveyor-general of Nebraska and Kansas, under the direction of the secretary of the interior, and such instructions as he may from time to time deem it advisable to give him.]

§18. And be it further enacted, that so much of the public lands of the United States in the territory of Dakota, west of its eastern boundary, and east and north of the Niobrara, or Running Water river, be formed into a land district, to be called the Yancton district, at such time as the president may direct, the land office for which shall be located at such point as the president may direct, and shall be removed from time to time to other points within said district whenever, in his opinion, it may be expedient.

§19. And be it further enacted, that the president be, and he is hereby, authorized to appoint, by and with the advice and consent of the senate, a register and receiver for said district who shall respectively be required to reside at the site of said office, and who shall have the same powers, perform the same duties, and be entitled to the same com-

pensation, as are or may be prescribed by law in relation to other land offices of the United States.

§20. And be it further enacted, that the river in said territory heretofore known as the "River aux Jacques," or "James river," shall hereafter be called the Dakota river.

§21. And be it further enacted, that until Congress shall otherwise direct, that portion of the territories of Utah and Washington between the forty-first and forty-third degrees of north latitude, and east of the thirty-third meridian of longitude west from Washington, shall be, and is hereby, incorporated into and made a part of the territory of Nebraska.

Approved March 2, 1861.

[Historical Note: Sections 4,6,10,12,13,14,16 and 17 were repealed in 1933 as obsolete.]